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assets are divested within the time period permitted by the appropriate Federal banking agency (including extensions) or, if the financial company does not have an appropriate Federal banking agency, five years;

(2) In a fiduciary capacity in good faith under applicable fiduciary law if the acquired securities or assets are held in the ordinary course of business and not acquired for the benefit of the company or its shareholders, employees, or subsidiaries;

(3) In connection with *bona fide* underwriting or market-making activities;

(4) Solely in connection with a corporate reorganization and the companies involved are lawfully controlled and operated by the financial company both before and following the reorganization; and

(5) That is, or will be, an issuer of asset back securities (as defined in Section 3(a) of the Securities and Exchange Act of 1934) so long as the financial company that retains an ownership interest in the company complies with the credit risk retention requirements in the regulations issued pursuant to section 15G of the Securities and Exchange Act of 1934.

(g) *Financial company* includes:

(1) An insured depository institution;

(2) A bank holding company;

(3) A savings and loan holding company;

(4) A company that controls an insured depository institution;

(5) A nonbank financial company supervised by the Board, and

(6) A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act.

(h) *Foreign financial company* means a financial company that is incorporated or organized in a country other than the United States.

(i) *Insured depository institution* has the same meaning as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(j) *Nonbank financial company supervised by the Board* means any nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for

which such determination is still in effect.

(k) *State* means any state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(l) *U.S. agency* has the same meaning as the term “agency” in §211.21(b) of the Board’s Regulation K (12 CFR 211.21(b)).

(m) *Total regulatory capital* has the same meaning as the term “total capital” as defined under the applicable risk-based capital rules.

(n) *Total risk-based capital ratio* means the “total capital ratio” as calculated under the applicable risk-based capital rules.

(o) *Total risk-weighted assets* means the measure of consolidated risk-weighted assets that a financial company uses to calculate its risk-based capital ratios under the applicable risk-based capital rules.

(p) *U.S. branch* has the same meaning as the term “branch” in §211.21(e) of the Board’s Regulation K (12 CFR 211.21(e)).

(q) *U.S. company* means a company that is incorporated in or organized under the laws of the United States or any State.

(r) *U.S. financial company* means a financial company that is a U.S. company.

(s) *U.S. subsidiary* means any subsidiary, as defined in §225.2(o) of Regulation Y (12 CFR 225.2(o)), that is a U.S. company.

§ 251.3 Concentration limit.

(a) *In general.* (1) Except as otherwise provided in §251.4, a company may not consummate a covered acquisition if upon consummation of the transaction, the liabilities of the resulting company would exceed 10 percent of the financial sector liabilities, and the company is or would become a financial company.

(2) *Financial sector liabilities.* (i) Subject to paragraph (a)(2)(ii) of this section, as of July 1 of a given year, financial sector liabilities are equal to the

average of the year-end financial sector liabilities figure for the preceding two calendar years. The measure of financial sector liabilities will be in effect until June 30 of the following calendar year.

(ii) For the period beginning July 1, 2015, and ending June 30, 2016, financial sector liabilities are equal to the year-end financial sector liabilities figure as of December 31, 2014.

(iii) The year-end financial sector liabilities figure equals the sum of the total consolidated liabilities of all top-tier U.S. financial companies (as calculated under paragraph (b) of this section) and the U.S. liabilities of all top-tier foreign financial companies (as calculated under paragraph (c) of this section) as of December 31 of that year.

(iv) On an annual basis and no later than July 1 of any calendar year, the Board will calculate and publish the financial sector liabilities for the preceding calendar year and the average of the financial sector liabilities for the preceding two calendar years.

(b) *Calculating total consolidated liabilities.* For purposes of paragraph (a) of this section:

(1) *Covered acquisition by a U.S. company.* For a covered acquisition in which a U.S. company would acquire a U.S. company or a foreign company, liabilities of the resulting U.S. financial company equal the consolidated liabilities of the resulting U.S. financial company, calculated on a pro forma basis in accordance with paragraph (c) of this section.

(2) *Covered acquisition by a foreign company of another foreign company.* For a covered acquisition in which a foreign company would acquire another foreign company, liabilities of the resulting foreign financial company equal the U.S. liabilities of the resulting financial company, calculated on a pro forma basis in accordance with paragraph (d) of this section.

(3) *Covered acquisition by a foreign company of a U.S. company.* For a covered acquisition in which a foreign company would acquire a U.S. company, liabilities of the resulting foreign financial company equal the sum of: (i) The U.S. liabilities of the foreign company immediately preceding the transaction (calculated in accordance

with paragraph (d) of this section) and (ii) the consolidated liabilities of the U.S. company immediately preceding the transaction (calculated in accordance with paragraph (c) of this section), reduced by the amount corresponding to any balances and transactions that would be eliminated in consolidation upon consummation of the transaction.

(c) *Liabilities of a U.S. company—*(1) *U.S. company subject to applicable risk-based capital rules.* For a U.S. company subject to applicable-risk based capital rules, consolidated liabilities are equal to:

(i) Total risk-weighted assets of the company; plus

(ii) The amount of assets that are deducted from the company's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(iii) Total regulatory capital of the company.

(2) *U.S. company not subject to applicable risk-based capital rules.* For a U.S. company that is not subject to applicable risk-based capital rules, consolidated liabilities are equal to the total liabilities of such company on a consolidated basis, as determined under applicable accounting standards.

(d) *Liabilities of a foreign company—*(1) *Foreign banking organization.* For a foreign banking organization, U.S. liabilities are equal to:

(i) The total consolidated assets of each U.S. branch or U.S. agency of the foreign banking organization, calculated in accordance with applicable accounting standards; plus

(ii) The total consolidated liabilities of each top-tier U.S. subsidiary that is subject to applicable risk-based capital rules (or reports information to the Board regarding its capital under risk-based capital rules applicable to bank holding companies), calculated as:

(A) Total consolidated risk-weighted assets of the subsidiary; plus

(B) The amount of assets that are deducted from the subsidiary's regulatory capital elements under the applicable risk-based capital rules, times

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a multiplier that is equal to the inverse of the subsidiary's total risk-based capital ratio minus one; minus

(C) Total consolidated regulatory capital of the subsidiary; plus

(iii) The total consolidated assets of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules and does not report information regarding its capital under risk-based capital rules applicable to bank holding companies, calculated in accordance with applicable accounting standards.

(2) *Foreign financial company that is not a foreign banking organization.* For a foreign company that is not a foreign banking organization, U.S. liabilities are equal to:

(i) The total consolidated liabilities of each top-tier U.S. subsidiary that is subject to applicable risk-based capital rules (or reports information to the Board regarding its capital under risk-based capital rules applicable to bank holding companies), calculated as:

(A) Total consolidated risk-weighted assets of the subsidiary; plus

(B) The amount of assets that are deducted from the subsidiary's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(C) Total regulatory capital of the subsidiary; plus

(ii) The total consolidated liabilities of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules, calculated in accordance with applicable accounting standards.

(3) *Intercompany balances and transactions*—(i) *Foreign banking organization.* A foreign banking organization must reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign banking organization's U.S. domiciled affiliates, branches or agencies to the extent such items are not eliminated in consolidation, and increase consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate,

branch, or agency of the foreign banking organization, to the extent such items are not reflected in the measure of liabilities.

(ii) *Foreign financial company.* A foreign company that is not a foreign banking organization may reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign organization's U.S. domiciled affiliates to the extent such items are not already eliminated in consolidation; provided that it increases consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate, to the extent such items are not already reflected in the measure of liabilities.

(e) *Applicable accounting standard.* If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that the company use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of this part. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

§ 251.4 Exceptions to the concentration limit.

(a) *General.* With the prior written consent of the Board, the concentration limit under § 251.3 shall not apply to:

(1) A covered acquisition of an insured depository institution that is in default or in danger of default (as determined by the appropriate Federal banking agency of the insured depository institution, in consultation with the Board);

(2) A covered acquisition with respect to which assistance is provided by the Federal Deposit Insurance Corporation